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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,934	11/26/2003	Michael Wayne Lane	YOR920030505US1 (163-21)	9639
24336	7590	02/14/2005	EXAMINER WILLIAMS, ALEXANDER O	
KEUSEY, TUTUNJIAN & BITETTO, P.C. 14 VANDERVENTER AVENUE, SUITE 128 PORT WASHINGTON, NY 11050			ART UNIT 2826	

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/722,934	<b>Applicant(s)</b> LANE ET AL.	
	<b>Examiner</b> Alexander O. Williams	<b>Art Unit</b> 2826	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Serial Number: 10/722934    Attorney's Docket #: YOR920030505US1(163-21)  
Filing Date: 11/26/04;

Applicant: Lane et al.

Examiner: Alexander Williams

Applicant's Amendment filed 11/18/04 to the election with traverse of Group I (device claims 1-9) filed 6/4/04 is acknowledged.

Claims 10-20 have been canceled.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3, 4, 8 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shimamoto et al. (US. Patent Application Publication # 2002/0102826 A1).

1. Shimamoto et al. (figures 1 to 16e) specifically figure 16e show a solid state device comprising: a first material (3 or 19 or 1 or 2); a second material 6; a barrier layer 4 formed between the first material and the second material to prevent a diffusion between the first material and the second material, the

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barrier layer includes a metal form of at least one of **Ru** and **Re**. Shimamoto et al. Fail to explicitly show a barrier layer. However, Shimamoto et al does show a electrode made of Ru material that can be used as a barrier layer since the material is the same.

3. The device as recited in claim 1, Shomamoto et al. show wherein the first material 3 is a dielectric and the second material 6 is a metal.

4. The device as recited in claim 1, Shomamoto et al. show wherein the first material 19 is a conductor and the second material is a metal 6.

8. The device as recited in claim 1, Shomamoto et al. show wherein device is a semiconductor device and the first material includes a semiconductor material 1.

9. The device as recited in claim 1, Shomamoto et al. show wherein the barrier layer includes a thickness of 700 Angstroms or less (see paragraph [0012]).

Therefore, it would have been obvious to one of ordinary skill in the art to use teaching of Shomamoto et al.'s metal electrode for the purpose of having a low amount of oxygen contamination and high thermal stability.

Claims 2 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shimamoto et al. (US. Patent Application Publication # 2002/0102826 A1) in view of Matsuse et al. (U.S. Patent Application Publication # 2002/0197856 A1).

Shimamoto et al. Is cited for showing the features of the claimed invention as detailed above, but fail to explicitly show wherein the metal form includes a hexagonal close packed structure and wherein the metal is copper.

Matsuse et al. Is cited for showing a barrier film wiring structure and electrodes of semiconductors device having a barrier film. Specifically, Matsuse et al. (figures 1 to 14) specifically figure 1 discloses A solid state device comprising: a first material 8 or 15 or 4; a second material 16; a barrier layer 14 formed between the first material and the second material to prevent a diffusion between the first material and the second material, the metal form includes a hexagonal close packed structure for the purpose of having a low amount of oxygen contamination and high thermal stability.

2. The device as recited in claim 1, the combination with Shomamoto et al. show wherein the metal 16 form includes a hexagonal close packed structure (see 16 in figure 1).

5. The device as recited in claim 1, the combination with Shomamoto et al. show wherein the first material 4 includes copper.

Therefore, it would have been obvious to one of ordinary skill in the art to use Matsuse et al.'s metal form including a hexagonal close packed structure to modify Shomamoto et al.'s metal form for the purpose of having a low amount of oxygen contamination and high thermal stability.

Initially, and with respect to claims 6 and 7, note that a "product by process" claim is directed to the product per se, no matter how actually made, In re Hirao, 190 USPQ 15 at 17 (footnote 3). See also In re Brown, 173 USPQ 685; In re Luck, 177 USPQ 523; In re Wertheim, 191 USPQ 90 (209 USPQ 554 does not deal with this issue); In re Fitzgerald, 205 USPQ 594, 596 (CCPA); In re Marosi et al., 218 USPQ 289 (CAFC); and most recently, In re Thorpe et al., 227 USPQ 964 (CAFC, 1985) all of which make it clear that it is the final product per se which must be determined in a "product by process" claim, and not the patentability of the process, and that, as here,

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an old or obvious product produced by a new method is not patentable as a product, whether claimed in "product by process" claims or not. Note that Applicant has burden of proof in such cases as the above case law makes clear.

Claims 6 and 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Shimamoto et al. (US. Patent Application Publication # 2002/0102826 A1).

As to the grounds of rejection under section 103, see MPEP § 2113.

## Response

Applicant's arguments filed 11/18/04 have been fully considered, but are moot in view of the new grounds of rejections detailed above.

Field of Search	Date
U.S. Class and subclass: 257/751,758,773,774,759,760,762	8/18/04 2/7/05
Other Documentation: foreign patents and literature in 257/751,758,773,774,759,760,762	8/18/04 2/7/05
Electronic data base(s): U.S. Patents EAST	8/18/04 2/7/05

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander O Williams whose telephone number is (571) 272 1924. The examiner can normally be reached on M-F 6:30 AM -7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272 1915. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AOW  
2/7/05

A handwritten signature in black ink, appearing to read 'AOW', with a stylized flourish extending from the end.

Primary Patent Examiner  
Alexander O. Williams